

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Samuel Ross	Team: Squad #13	CCRB Case #: 201709632	<input checked="" type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Tuesday, 10/10/2017 3:07 AM	Location of Incident: West 21 Deli and Grocery Corp. (215 8th Avenue); § 87(2)(b)	Precinct: 10	18 Mo. SOL 4/10/2019	EO SOL 4/10/2019	
Date/Time CV Reported Tue, 11/14/2017 11:06 AM	CV Reported At: CCRB	How CV Reported: Mail	Date/Time Received at CCRB Tue, 11/14/2017 11:06 AM		

Complainant/Victim	Type	Home Address
§ 87(2)(b)	§ 87(2)(b)	§ 87(2)(b)

Witness(es)	Home Address
§ 87(2)(b)	§ 87(2)(b)
§ 87(2)(b)	§ 87(2)(b)
§ 87(2)(b)	§ 87(2)(b)
§ 87(2)(b)	§ 87(2)(b)
§ 87(2)(b)	§ 87(2)(b)
§ 87(2)(b)	§ 87(2)(b)

Subject Officer(s)	Shield	TaxID	Command
1. POM Robert Humann	10077	956749	010 PCT
2. Officers			010 PCT
3. POM Cheng Pak	04240	942318	010 PCT

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POF Allyssa Hasemann	17079	957664	010 PCT
2. POM Kasey Homer	09467	949112	010 PCT
3. CPT Kenneth Gorman	00000	921387	C A B
4. POM Jordan Rossi	03917	949581	010 PCT
5. SGT Daniel Gravitch	01162	896881	010 PCT
6. POM Joseph Giordano	05911	959079	010 PCT
7. POM Matthew Caulfield	05849	958385	010 PCT

Officer(s)	Allegation	Investigator Recommendation
A. Officers	Abuse: At 215 8th Avenue in Manhattan, officers drew their guns.	§ 87(2)(b)
B.POM Robert Humann	Force: At 215 8th Avenue in Manhattan, PO Robert Humann used a Taser against § 87(2)(b)	§ 87(2)(b)
C.POM Cheng Pak	Discourtesy: At Bellevue Hospital in Manhattan, Police Officer Cheng Pak spoke discourteously to § 87(2)(b)	§ 87(2)(b)
D.POM Cheng Pak	Force: At Bellevue Hospital in Manhattan, Police Officer Cheng Pak tightly shackled § 87(2)(b)	§ 87(2)(b)

Case Summary

§ 87(2)(b) filed this complaint via a letter received at the CCRB on November 14, 2017. The case was closed § 87(2)(g) on November 28, 2017 and reopened on January 5, 2018. On October 10, 2017, at approximately 3:00 AM, § 87(2)(b) engaged in a dispute with a clerk at West 21 Deli and Grocery, located at 215 8th Avenue in Manhattan. PO Robert Humann, PO Alyssa Hasemann, PO Jordan Rossi, and PO Kasey Homer of the 10th Precinct responded. All four officers entered the location with guns drawn (**Allegation A: Abuse of Authority**, § 87(2)(g)). PO Humann then used a Taser against § 87(2)(b) (**Allegation B: Force**, § 87(2)(g)). § 87(2)(b) who was placed under arrest for robbery, assault, and criminal mischief, was then transported to § 87(2)(b) in Manhattan. There, PO Cheng Pak of the 10th Precinct tightened his leg shackles (**Allegation C: Force**, § 87(2)(g)) and said to § 87(2)(b) “Shut the fuck up” (**Allegation D: Discourtesy**, § 87(2)(g)).

The investigation obtained video evidence from the deli in question (Board Review 01, 02, 03, and 04). An attorney was consulted with regard to Allegation B.

Findings and Recommendations

Allegation A—Abuse of Authority: At 215 8th Avenue in Manhattan, officers drew their guns.

§ 87(2)(b) (Board Review 05) stated that after he paid the deli clerk for a can of beer, the clerk snatched the can from his hand and claimed that § 87(2)(b) had not paid. § 87(2)(b) rebutted that he had paid, at which point the clerk called 911. § 87(2)(b) decided to fight the clerk. He did not care that the police were en route. When § 87(2)(b) moved to the end of the counter to approach the clerk, the clerk charged at him. § 87(2)(b) tried to punch the clerk but missed. They began to grapple with one another, and the clerk knocked § 87(2)(b) into a shelf of potato chips. The clerk also punched § 87(2)(b) on the head multiple times. § 87(2)(b)'s friend, known to the investigation only as § 87(2)(b), separated § 87(2)(b) from the clerk. Four officers entered the deli shortly after § 87(2)(b) separated § 87(2)(b) and the clerk. The fight had ended when then officers entered. Each of the four officers entered with his or her gun drawn.

As noted, the investigation obtained video from the deli. Both interior and exterior cameras captured the officers' arrival on scene and their entrance into the deli.



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Video Clip #1 – Exterior view of officers entering deli (Board Review 06)



201709632_20180410_1742_DM.mp4

Video Clip #2 – Interior view #1 of officers entering deli (Board Review 07)



201709632_20180410_1745_DM.mp4

Video Clip #3 – Interior view #2 of officers entering deli (Board Review 08)

§ 87(2)(g)

Allegation B—Force: At 215 8th Avenue in Manhattan, Police Officer Robert Humann used a Taser against § 87(2)(b)

It is undisputed that PO Humann used a Taser against § 87(2)(b)

§ 87(2)(b) stated that when the officers entered the deli, he raised his hands above his shoulders. However, he suddenly became very dizzy; he did not know the cause. He backed up and leaned his back against a wall. He then leaned down with his hands on his knees in order to keep his balance. He announced to the officers that he felt dizzy. He believed that the officers were yelling, “Freeze,” but did not remember with certainty what they were saying. § 87(2)(b) tried to tell them that he he was so dizzy he might lose consciousness. The officers were to § 87(2)(b)s left, facing his left side.

§ 87(2)(b) was suddenly struck with a Taser prong on his left side, below the armpit. He had not seen any officer draw, hold, or point a Taser. He felt an electrical current run through his body. He remained in the same position, leaning over with his hands on his knees. His body then became stiff and he fell to the ground, shaking. He lost consciousness.

PO Humann (Board Review 09) stated that while on patrol, he and PO Hasemann received a report of a 10-39 at 215 8th Avenue, indicating an “other crime in progress.” PO Humann did not recall if any other information was provided. He did not recall if there was any indication that any weapon was involved.

PO Humann and PO Hasemann immediately responded to the incident and came to a stop in front of the location, a corner deli. An additional unit arrived shortly afterward. Outside of the deli, PO Humann did not speak with anyone about what was taking place, or what had taken place, inside.

PO Humann and PO Hasemann entered the deli. There were three individuals inside, near the rear. The individual later identified as § 87(2)(b) was fighting with § 87(2)(b) whom PO Humann recognized as the store clerk due to prior directed patrols at that location. A third individual, who was later determined to be a friend of § 87(2)(b) was also present inside of the deli. Shelves were knocked over and merchandise was scattered on the floor. According to PO Humann, § 87(2)(b) was choking and punching the clerk.

PO Humann was armed with a Taser. He had been trained in use of conducted electricity weapons and underwent training twice each year. He had undergone training within the previous six months but he did not recall when exactly. PO Humann drew his Taser because there was a

fight in progress and because he did not know whether or not it would be necessary to use it. He only knew that it would be necessary to bring the fight to an end.

As the officers approached the three men at the rear of the deli, § 87(2)(b)'s friend moved away from § 87(2)(b) and the clerk, passed the officers, and exited the deli. The clerk and § 87(2)(b) then separated from one another. Having recognized the clerk, PO Humann instructed him to move past the officers and exit the deli. He did so, leaving only the officers and § 87(2)(b) in the deli.

PO Humann stood between six and ten feet from § 87(2)(b) who stood near the rear of the deli. PO Humann stood between § 87(2)(b) and the door. The other officers stood behind PO Humann, who was nearest to § 87(2)(b).

PO Humann instructed § 87(2)(b) to raise his hands. § 87(2)(b) complied. PO Humann then told him to turn around and place his hands behind his back. However, § 87(2)(b) lowered his hands and began to pace and yell. PO Humann did not remember what § 87(2)(b) said, but § 87(2)(b) was irate and was not listening to him. PO Humann repeated the commands multiple times, but after having initially raised his hands and then lowering them, § 87(2)(b) did not comply with any further commands.

PO Humann did not recall if § 87(2)(b) made any verbal threats. He never made any physically aggressive action or movement toward any officer. Further, there was no indication that § 87(2)(b) might be armed.

After approximately five minutes, PO Humann told § 87(2)(b) that if he failed to comply and continued to behave aggressively, PO Humann might use a Taser against him. In response, § 87(2)(b) turned his body, "blading it," so that his side faced PO Humann. PO Humann believed that § 87(2)(b) turned his body in order to present a smaller target for the Taser. PO Humann could not see one of § 87(2)(b)'s hands, as § 87(2)(b) had turned to the side. § 87(2)(b) also clenched the one visible fist. This indicated, in PO Humann's experience, an aggressive demeanor. Because § 87(2)(b) had already fought with the store clerk and appeared unafraid of the use of the Taser, his turning his body and clenching his fist indicated to PO Humann that § 87(2)(b) wanted to fight. However, PO Humann did not recall § 87(2)(b) ever giving any verbal indication that he wanted to fight.

§ 87(2)(b) then stopped responding and stood completely still. Due to this behavior, PO Humann suspected that § 87(2)(b) might be under influence of narcotics or that he might be emotionally disturbed. There was no indication that § 87(2)(b) was under the influence of alcohol.

PO Humann then discharged the Taser at § 87(2)(b). He did so because he believed that this was the safest way to subdue § 87(2)(b) and in order to ensure that no one would be injured. He believed it was the minimum degree of force necessary to effect § 87(2)(b)'s arrest without causing any injury to the officers, or to § 87(2)(b). If PO Humann were to use pepper spray, everyone in the deli would have been affected. Further, he did not want to strike § 87(2)(b) with an asp or to shoot him. Lastly, he believed that the use of a Taser was preferable to approaching and restraining § 87(2)(b) with his hands because the Taser would incapacitate § 87(2)(b) and give officers a five-second window to approach without using any other physical force. No officer attempted to effect arrest by any other means before PO Humann discharged the Taser.

Both Taser prongs struck § 87(2)(b). One prong struck his upper shoulder and one struck his hip, causing his abdomen to spasm. PO Humann discharged the Taser for one five-second cycle. The other officers took hold of § 87(2)(b) while the Taser was still cycling. § 87(2)(b) fell to the floor and was then placed in handcuffs.

PO Humann's memo book entries (Board Review 10), TRI report (Board Review 11), and Taser data sheet (Board Review 12) were consistent with his statement.

PO Hasemann's testimony (Board Review 13) was consistent with that of PO Humann. She did not recall receiving any additional information about the incident via radio or from any witness upon arrival at the location. She stated that § 87(2)(b) was initially compliant and stopped fighting when the officers arrived, but did not seem to be paying full attention to them. § 87(2)(b) then stepped forward and took an aggressive stance. She believed it constituted a "fighting stance." He tensed his body with his arms at his sides and clenched his fists. Additionally, he angled his body, which she considered to be an indication of his willingness to fight. Beyond these behaviors, there was no other indication that § 87(2)(b) wanted to fight.

PO Hasemann could not determine what § 87(2)(b) planned to do at this point. There was no indication that he was armed and he never made any sudden movement toward his waist or any pocket.

PO Humann instructed § 87(2)(b) to put hands up and to turn around. However, § 87(2)(b) did not comply. Instead, he yelled at the officers. PO Hasemann did not recall the substance of § 87(2)(b)'s remarks, but she did not recall him making any verbal threat.

After PO Humann issued § 87(2)(b) multiple verbal commands, § 87(2)(b) "shut down." He stopped responding and had an "empty stare." At this time, PO Humann told § 87(2)(b) that he did not want to use the Taser. However, § 87(2)(b) did not respond. Finally, PO Humann deployed the Taser.

Police radio communications pertaining to this incident (Board Review 14 for audio; Board Review 15 for transcript) reveal that the radio dispatcher relayed a 10-39 inside of the deli, to which Sector A (PO Humann and PO Hasemann) stated they would respond. The dispatcher then stated that two males were fighting and relayed a call for help at the same location. The dispatcher relayed no further information to the responding officers.

The investigation was unable to obtain a statement from § 87(2)(b) (Board Review 16) or § 87(2)(b) the deli clerk (Board Review 17). However, § 87(2)(b) (Board Review 18), a bystander who called 911, stated that he did not speak with any responding officer when they arrived and did not see any officer speak with anyone before they entered the deli. He did not believe the officers sought any further information before entering the deli.

Video Clips #1 and #2, above, reveal that while the officers did not appear to have any conversation with witnesses upon arrival, several individuals approached them. These video clips were shown to both PO Humann and PO Hasemann during their CCRB interviews. They each stated that they did not recall learning any information about the incident from any of these individuals upon arrival.

Video from the interior of the deli captured the interaction between § 87(2)(b) and the officers prior to the deployment of the Taser, as well as the Taser deployment itself:



201709632_20180410_1854_DM.mp4

Video Clip #4 – Interactions culminating in deployment of Taser (Board Review 19)

Another interior camera, located in the rear of the deli, captured § 87(2)(b)'s behavior and positioning during the same portion of the incident:



201709632_20180410_1900_DM.mp4

Video Clip #5 – § 87(2)(b) behavior prior to deployment of Taser (Board Review 20)

Video clips #4 and #5 reveal that when the officers enter the deli, § 87(2)(b) was positioned between § 87(2)(b) and the clerk. Contrary to PO Humann's statements, § 87(2)(b) was not choking or punching the clerk. Then, after § 87(2)(b) and the clerk exited the deli, § 87(2)(b) and PO Humann stood facing one another at a distance of approximately ten feet. As shown in video clip #2, above, PO Humann had drawn his Taser immediately upon entering the location. PO Humann pointed his Taser at § 87(2)(b) for the duration of the encounter. § 87(2)(b) and PO Humann both gestured and appeared to speak to one another, but the video does not capture audio. They faced one another, both appearing to speak, for approximately twenty-five seconds. § 87(2)(b) then turned to his right, exposing his left side to the officers, and leaned back against a cooler. He appeared to speak to PO Humann from this position for another twenty seconds. He made no sudden movement. Finally, he lowered his head and stood still. His arms hung and his hands were together, near his crotch. He maintained this position for approximately eight seconds, making no sudden movement, before PO Human deployed the Taser.

PO Humann reviewed these portions of video during his CCRB interview. He stated that the videos were consistent with his recollection of § 87(2)(b)'s actions. The videos did not further refresh his recollection except by reminding him that § 87(2)(b) had a muscular build. As such, PO Humann believed that he and the three other officers present likely could not have arrested § 87(2)(b) without someone being injured.

According to NYPD Patrol Guide Procedure 221-01 (Board Review 21), officers may use force when it is reasonable to ensure the safety of a member of the service or a third person, or otherwise protect life, or when it is reasonable to place a person in custody. Further, any use of force must be reasonable given the circumstances.

According to NYPD Patrol Guide Procedure 221-08 (Board Review 22), regarding the use of conducted electricity weapons (CEWs) such as Tasers, such weapons can serve as effective means to subdue an aggressive suspect or emotionally disturbed persons and are intended to provide a greater margin of safety for officers who might otherwise be forced to physically subdue a dangerous subject. However, a CEW should only be used against persons who are actively resisting, exhibiting active aggression, or to prevent individuals from physically injuring

themselves or other persons actually present. According to this procedure, among the factors an officer should consider when deciding whether or not to use a CEW are: the nature and severity of the crime/circumstances; actions taken by the subject; duration of the action; immediacy of the perceived threat or harm to the subject, members of the service, and/or bystanders; whether the subject is actively resisting custody; whether the subject is attempting to evade arrest by flight; the number of subjects in comparison to the number of MOS; the size, age, and condition of the subject in comparison with MOS; the subject's violent history, if known; the presence of a hostile crowd or agitators; and whether the subject is under the influence of a stimulant or narcotic which would affect pain tolerance or increase the likelihood of violence. In a subsequent note, the same procedure adds that it is strictly prohibited to use a CEW on a person who passively resists (e.g. going limp, offering no active physical resistance).

§ 87(2)(g) [REDACTED]

§ 87(2)(g) [REDACTED]

Allegation C—Discourtesy: At § 87(2)(b) in Manhattan, Police Officer Cheng Pak spoke discourteously to § 87(2)(b)

Allegation D—Force: At § 87(2)(b) in Manhattan, Police Officer Cheng Pak tightly shackled § 87(2)(b)

§ 87(2)(b) stated that when he awoke at § 87(2)(b), he was handcuffed to a bed and his ankles were in shackles. The shackles were not very tight. PO Pak was present. When § 87(2)(b) told PO Pak that he needed to use the bathroom, PO Pak said, “Shut the fuck up,” and then tightened § 87(2)(b)'s ankle shackles, causing pain. Other officers were also present at the time. § 87(2)(b) called out and a nurse appeared. She called for a doctor, who ordered PO Pak to remove the leg shackles and allow § 87(2)(b) to use the bathroom.

PO Pak (Board Review 23) stated that upon arrival at § 87(2)(b), he shackled one of § 87(2)(b)'s legs to the hospital bed and double-locked the shackles. § 87(2)(b) immediately complained that the shackle on his ankle was too tight. However, PO Pak had not applied the shackle tightly. It was not “skin-tight.” PO Pak told § 87(2)(b) that the shackles had to be “snug” but that they were not overly tight. There was enough space between the shackle and § 87(2)(b)'s leg for PO Pak to place a finger in the gap and to wiggle the finger. PO Pak demonstrated this to § 87(2)(b).

§ 87(2)(b) however, was nonetheless upset with PO Pak. He made insulting remarks, referring to PO Pak, who is Asian, as a “North Korean dictator” and a “North Korean fat fuck.” PO Pak told § 87(2)(b) that he was Chinese, not Korean. Otherwise, he ignored § 87(2)(b)'s remarks and did not become angry with § 87(2)(b).

PO Pak did not remember if § 87(2)(b) ever asked to use the bathroom or to get out of bed for any reason. PO Pak never said, “Shut the fuck up,” or used any other profanity toward § 87(2)(b). He never tightened § 87(2)(b)'s leg shackles after initially applying them. They were never adjusted or reapplied. They were double-locked the entire time PO Pak was at the hospital with § 87(2)(b) and no officer ever adjusted them. Further, no doctor or other member of medical staff ever gave any instruction regarding the shackles or expressed concern about PO Pak's actions.

PO Joseph Giordano of the 10th Precinct (Board Review 24), who was with PO Pak at the hospital, stated that PO Pak never tightened the shackles, that § 87(2)(b) never complained about the shackles, and that no member of hospital staff ever expressed concern about the tightness of the shackles. At some point, § 87(2)(b) asked to go to the bathroom, and he was escorted to a bathroom. The officers were not resistant and there was no reason that they did not want him to use the bathroom. PO Pak never said, “Shut the fuck up,” or used any profanity, whether in regards to a request for the bathroom or at any other time.

The investigation obtained § 87(2)(b)'s medical records from § 87(2)(b) (Privileged Documents). The records include no indication that any officer ever used profanity toward § 87(2)(b) or tightened his leg shackles. However, the medical records identified several members of § 87(2)(b) staff who interacted with § 87(2)(b). Among them, the investigation was able to obtain statements from Dr. § 87(2)(b) (Board Review 25) and Nurse § 87(2)(b) (Board Review 26). Neither Dr. § 87(2)(b) nor Nurse § 87(2)(b) recalled any interaction with a black male patient who had been shot with a Taser and arrested on § 87(2)(b). They did not recall the name § 87(2)(b). Both Dr. § 87(2)(b) and Nurse § 87(2)(b) were presented with the respective notes they each prepared in § 87(2)(b)'s medical records, but these notes did not refresh their respective recollections of any such interaction. Neither Dr. § 87(2)(b) nor Nurse § 87(2)(b) recalled any officer tightening a patient's leg shackles or using profanity toward an officer on or about the date in question.

§ 87(2)(g)

Civilian and Officer CCRB Histories

- This is the first CCRB complaint to which § 87(2)(b) has been a party (Board Review 27).
- PO Humann has been a member of service for three years and this is the first CCRB complaint to which he has been a subject (Board Review 28).
- PO Pak has been a member of service for eleven years and has been a subject in one CCRB complaint and one allegation, which was not substantiated (Board Review 29).

§ 87(2)(g)

Mediation, Civil and Criminal Histories

- This complaint was not suitable for mediation.
- § 87(2)(b) filed a Notice of Claim with the City of New York claiming that an officer used a Taser against him (Board Review 30). He did not specify any amount which he sought in redress. On April 11, 2018, Inv. Ross submitted a request to the Office of the Comptroller requesting information as to any past and/or scheduled 50H hearing(s). As of the writing of this report no response has yet been received.

- § 87(2)(b), § 87(2)(c) (impair contract awards or CBAs) [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Squad No.: _____

Investigator: _____

Signature	Print Title & Name	Date
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Squad Leader: _____

Signature	Print Title & Name	Date
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Reviewer: _____

Signature	Print Title & Name	Date
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